

REMARKS

On pages 2-5 of the September 29, 2006 Office action, the Examiner rejects Claims 4-12 on the basis that the subject matter of claims 4-12 would have been obvious at the time the invention was made, and is unpatentable over U.S. Patent Number 6,199,781 issued to Hruska in view of U.S. Patent Number 5,562,392 issued to Raben and other selected art applied in respect of independent Claim 4. The Applicant respectfully disagrees for the reasons set out below.

In order to establish that any claim is obvious, the Examiner must identify:

1. All of the claimed elements in the prior art;
2. A reason or motivation to modify or combine these elements to arrive at the claimed invention; and
3. A reasonable likelihood of success (see M.P.E.P. 2141).

1. All Claimed Elements

It is respectfully submitted that the Examiner has failed to cite prior art, that, alone or in combination, teaches all of the elements of independent Claim 4. In particular, none of the prior art discloses a bale carrier or any clearly analogous element between respective forks of a fork lift. The Examiner has cited Raben as disclosing a fork lift with a material carrier extending inwardly toward opposing forks (216). However, the embodiment of Raben shown in Figure 10 does not disclose the use of forks at all. Instead, what is disclosed is a clamping arrangement 218 having two arms 221 biased toward each other that are adapted to engage the sides of a tire inserted between them. Support surfaces 216 are included between the respective arms and are adapted to support the base tire in a stack of tires when Raben's tire stacking device is arranged in its vertical position. In the embodiments which do show the use of "forks" (see, for instance, Figure 4), no material carriers are shown.

Similarly, with respect to the Examiner's position that Chain et al. when combined with Hruska and Raben discloses elements of a bale carrier recited in claim 6, it is respectfully submitted that Chain does not teach the use of bale carrier elements at all. The Examiner referred to "bale rod carriers with three sections" in discussing Figure 2 and 3 and reference number 252. However, the upwardly extending assembly 224, 226 and corresponding "rail

members” 252 and 256 are clearly not “bale rod carriers”. Those elements are adapted to assist in retaining a bale already loaded in the back of a pickup. They do not extend between respective forks and are not adapted to slide under, engage or support a bale as it is lifted by a fork lift.

Generally, when one considers the nature of the invention in issue – an improved fork lift for a bale processor, it is respectfully submitted to be clear that none of the prior art discloses a bale carrier between respective forks. While Raben does disclose the use of support surfaces in conjunction with automatic clamping arms, it does not disclose the same in respect of conventional forks and does not solve the problem solved by the invention claimed in the instant application, namely the need for versatile fork lifts adapted to engage and pick up different shapes and sizes of bales for deposit in the associated bale processor.

2. Motivation

As the Examiner is well aware, obviousness will not be established by combining prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. In the present case, it is respectfully submitted that there would be no motivation to combine the teachings of Hruska with the teachings of Raben to come up with the Applicant’s improved bale processor fork lift. As noted, Raben does not disclose a “fork lift”, but instead discloses a frame and method particularly adapted for stacking and moving stacks of tires. Obviously, the problems associated with moving stacked items differ from the problems associated with engaging and flipping baled material into a bale processor. In fact, Raben does not even disclose a fork lift *per se*, but only a frame that may be utilized with a fork lift to lift a stack of tires. Further, the clamping arrangement with the support surfaces relied upon by the Examiner as teaching the “bale carriers” of the present invention does not teach toward the claimed solution to the basic problem of providing a flexible and efficient means for engaging bales of different shapes and sizes for loading into a bale processor.

In summary, it is submitted that the tire stacking device of Raben is not analogous art to the bale processor fork lift disclosed and claimed in the present application. It is not a fork lift and is not adapted to be utilized with baled crop material or anything similar.

3. Reasonable Likelihood of Success

Even if one were to consider Raben as disclosing bale carriers as claimed in the present application and that persons of ordinary skill in the art would be motivated to combine Raben with Hruska, absent *ex post facto* analysis based on the Applicant's invention, there is nothing to support a reasonable likelihood of success in arriving at the Applicant's claimed invention. The only embodiments of Raben disclosing the use of "support surfaces" include complicated clamping mechanisms specifically adapted for engaging tires.

In short, while it may seem obvious after the fact to utilize a low profile "bale carrier" between two forks of an adjustable fork lift to facilitate loading of different sizes and shapes of bales into bale processors, no one before the Applicant did so. The fact that support surfaces are shown in conjunction with a clamping system on a tire stacking rack cannot, it is respectfully submitted, render the invention obvious.

CONCLUSION

In light of the above remarks, the Applicant respectfully requests allowance of Claims 4-12. The Examiner is invited to contact the undersigned Applicant's Representative in order to advance prosecution of this application.

Respectfully submitted,



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